IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.768 OF 2005

IN

SUIT NO.2061 OF 2004

Dr.Palakavayalil Joseph Thomas ...Plaintiff

Versus

M/s.De-Nocil Crop Protection Ltd.

& Anr. ...Defendants

.....

Mr.Ajay Panicker for Applicant/Plaintiff.

Mr.Snehal Shah i/b Mustafa Motiwala for Defendant No.2.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 30, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Chamber Summons is for seeking amendment of the Plaint in terms of Schedule to the Chamber Summons. The background in which the

present Chamber Summons has been filed is that after institution of the Suit No.2061 of 2004, the Plaintiff moved Notice of Motion No.2083 of 2004 and prayed for relief of injunction against the Defendants in terms of prayer clause (a). While considering the said Notice of Motion, it is contended, that as necessary averments with reference to clauses 7 and 9 of the Memorandum of Understanding (hereinafter referred to as 'MOU') dated 17th May 1985 to justify the relief of the injunction were not mentioned in the Plaint, Plaintiff withdrew the Notice of Motion with liberty to take out appropriate proceedings.

3. According to the Plaintiff, the broad facts warranting relief of injunction against the Defendants are already set out in the Plaint. Inasmuch as in Para 23 of the Plaint, it is clearly mentioned that the Plaintiff was entitled for permanent injunction on account of the fact that the Defendant No.1 had stopped purchase of Miraculan from the Plaintiff, in terms of Clause 5 of the MOU, the Plaintiff is entitled to de-register the trade name and object to user of

the trade mark Miraculan by the Defendant No.1.

4. It is fairly accepted that clauses 7 and 9 of the MOU are not specifically mentioned in the Plaint. Nevertheless, contends learned Counsel, relief of injunction as prayed in terms of prayer clause (f) can be made good on the basis of Clauses 7 and 9 of the MOU. Clause 7 of the MOU stipulates that in the event, the Defendant discontinues purchase of the product for any reason whatsoever, the Defendant shall be entitled to claim and the Plaintiff will allow a grace period of about five years time from such date of discontinuation by the Defendant so as to enable the Defendant to dispose of the product already purchased from the Plaintiff and Defendant will be entitled to register the trade name in his own name or his nominee on expiry of such period of five years and/or claim damages therefor. In Para 9 of the MOU, it is provided that on expiry of five years from the date of Defendant’s discontinuing to purchase the product from M/s.Kay Laboratories, the Defendant shall not sell any product in the name of Miraculan and will cease to have any right over the same.

5. In other words, it is submitted that by present Chamber Summons, the Plaintiff seeks to amend of the Plaint, which is clarificatory in nature for providing better particulars to justify the relief claimed. In my opinion, there is substance in this submission.

6. However, Counsel for the Defendants contends that there is nothing in the order dated 5th May 2005 passed by Justice D.K.Deshmukh that the Court had granted liberty to file the present Chamber Summons, while allowing the Plaintiff to withdraw the Notice of Motion. It is then argued that the legal notice sent by the Plaintiff at page 47 of the Plaint is dated 6th October 1999 and even if the case of the Plaintiff, relying on clauses 7 and 9 of the MOU is to be accepted for the time being as it is, then there was no cause of action to proceed against the Defendants, as five years period had not expired. It is then argued that the Plaintiff has now spelt out the particulars during the course of argument that discontinuation of purchase of products by Defendants was prior to

April 1999, relying on Paragraph No.7 of the said legal notice dated 6th October 1999. Besides, it is contended that the Chamber Summons makes no reference to the two letters referred to in the said legal notice purportedly sent by the Defendants dated 14th April 1999 and 14th June 1999. In other words, it is submitted that date of discontinuance of the purchase by the Defendants is not clearly spelt out either in the legal notice or in the Plaint or in the proposed amendment sought by the present Chamber Summons. On this count, the prayer for amendment be rejected.

7. Having considered the rival submissions, in my opinion, as mentioned earlier, the proposed amendment is only clarificatory in nature and provides for better particulars so as to specifically refer to clauses 7 and 9 of the MOU for justifying relief in terms of prayer clause (f) of the Plaint. The fact that the Defendants had discontinued purchase of the product is plainly stated in the legal notice dated 6th October 1999 whilst making reference to the letter sent by Defendants on 14th April 1999 and 14th June 1999.

Indeed, in para 23 of the Plaint, no specific date of discontinuance is referred to, however, in the proposed amendment so as to incorporate Para 22A, specific mention has been made that Defendants stopped purchasing products from Plaintiff since 1999, which date, according to the Plaintiff, is spelt out from the correspondence between the parties, in particular letter sent by the Defendants to the Plaintiff, reference to which is made in Para 7 of the legal notice dated 6th October 1999. If these facts are to be accepted, then the Plaintiff would be justified in pursuing the relief of injunction with reference to clauses 7 and 9 of the MOU.

8. I am not impressed by the objection taken on behalf of the Defendants that the legal notice dated 6th October 1999, which ought to have been taken as date of discontinuance of purchase by Defendants so as to reckon the period referred to in clauses 7 and 9 of the MOU and on that basis, to disentitle the Plaintiff of the relief of proposed amendment.

9. In my opinion, in the interest of justice, Plaintiff is entitled for the relief in terms of prayer clause (a) of the Chamber Summons.

10. Accordingly, Chamber Summons made absolute in terms or prayer clause (a). Amendment to be carried out within four weeks from today. No order as to costs.

11. It is made clear that nothing said in this order may be considered as expression of opinion on the merits of the controversy. All questions in that behalf are left open, to be decided at the appropriate stage.

A.M.KHANWILKAR, J.